

JS 44 (Rev. 02/19)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

William Arroyo

**DEFENDANTS**

Aspen Construction Services, Inc. and Krzysztof Kaczmarczyk

(b) County of Residence of First Listed Plaintiff Philadelphia

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Philadelphia

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) Attorneys (Firm Name, Address, and Telephone Number)

Frank P. Spada, Jr., Esquire

Semanoff Ormsby Greenberg &amp; Torchia, LLC

2617 Huntingdon Pike, Huntingdon Valley, PA 19006 (215) 887-0200

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                                   | DEF                                   |   | PTF                        | DEF                                   |
|---|---------------------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input checked="" type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2            | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5            |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3            | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habes Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	<b>LABOR</b> <input checked="" type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding    ☐ 2 Removed from State Court    ☐ 3 Remanded from Appellate Court    ☐ 4 Reinstated or Reopened    ☐ 5 Transferred from Another District (specify)    ☐ 6 Multidistrict Litigation - Transfer    ☐ 8 Multidistrict Litigation - Direct File

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
FLSA 29 U.S.C. Section 201 et seq.

Brief description of cause:

Claims for wages and overtime not paid

**VII. REQUESTED IN COMPLAINT:**☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ In excess of 150,000.00

CHECK YES only if demanded in complaint:  
JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE SlomskyDOCKET NUMBER 2:18-cv-02471-JHS

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

**DESIGNATION FORM**

*(to be used by counsel or pro se plaintiff to indicate the category of the case for the purpose of assignment to the appropriate calendar)*

Address of Plaintiff: 155 E. Godfrey Avenue, Philadelphia, PA 19120

Address of Defendant: 2136 Haworth Street, Philadelphia, PA 19124

Place of Accident, Incident or Transaction: Philadelphia

**RELATED CASE, IF ANY:**

Case Number: 2:18-cv-02471-JHS Judge: Slomsky Date Terminated: \_\_\_\_\_

Civil cases are deemed related when **Yes** is answered to any of the following questions:

- |  |   |  |
|--|---|--|
| 1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| 2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?            | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/>            |
| 3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action of this court? | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |
| 4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  | Yes <input type="checkbox"/>            | No <input checked="" type="checkbox"/> |

I certify that, to my knowledge, the within case ☐ is / ☒ is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 11/11/19 [Signature] Must sign here  
Attorney-at-Law / Pro Se Plaintiff 48331  
Attorney I.D. # (if applicable)

**CIVIL: (Place a ✓ in one category only)**

**A. Federal Question Cases:**

- ☐ 1. Indemnity Contract, Marine Contract, and All Other Contracts
- ☐ 2. FELA
- ☐ 3. Jones Act-Personal Injury
- ☐ 4. Antitrust
- ☐ 5. Patent
- ☐ 6. Labor-Management Relations
- ☐ 7. Civil Rights
- ☐ 8. Habeas Corpus
- ☐ 9. Securities Act(s) Cases
- ☐ 10. Social Security Review Cases
- ☒ 11. All other Federal Question Cases

(Please specify): Fair Labor Standards Act

**B. Diversity Jurisdiction Cases:**

- ☐ 1. Insurance Contract and Other Contracts
- ☐ 2. Airplane Personal Injury
- ☐ 3. Assault, Defamation
- ☐ 4. Marine Personal Injury
- ☐ 5. Motor Vehicle Personal Injury
- ☐ 6. Other Personal Injury (Please specify): \_\_\_\_\_
- ☐ 7. Products Liability
- ☐ 8. Products Liability – Asbestos
- ☐ 9. All other Diversity Cases

(Please specify): \_\_\_\_\_

**ARBITRATION CERTIFICATION**

*(The effect of this certification is to remove the case from eligibility for arbitration.)*

I, Frank P. Spada, Jr., Esquire, counsel of record or pro se plaintiff, do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, § 3(c) (2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs:

☐ Relief other than monetary damages is sought.

DATE: 11/11/19 [Signature] Sign here if applicable  
Attorney-at-Law / Pro Se Plaintiff 48331  
Attorney I.D. # (if applicable)

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

WILLIAM ARROYO, on behalf of :  
Himself and all others similarly :  
situated v. :

CIVIL ACTION

ASPEN CONSTRUCTION SERVICES, INC. and  
KRZYSZTOF KACZMARCZYK

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

11/11/19  
Date

  
Attorney-at-law  
Frank R. Spada, Jr. Esq.

\_\_\_\_\_  
Attorney for Plaintiff

(215) 887-0200

fspada@sogtlaw.com

\_\_\_\_\_  
Telephone

(215) 884-3500  
FAX Number

\_\_\_\_\_  
E-Mail Address

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

WILLIAM ARROYO, on behalf of  
Himself and all others similarly  
situated v.

CIVIL ACTION

ASPEN CONSTRUCTION SERVICES, INC. and  
KRZYSZTOF KACZMARCZYK

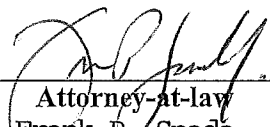
NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

11/11/19  
Date

  
Attorney-at-law  
Frank R. Spada, Jr. Esq.

Attorney for Plaintiff

(215) 887-0200

(215) 884-3500  
FAX Number

fspada@sogtlaw.com

Telephone

E-Mail Address



### **PARTIES**

3. Plaintiff Arroyo is an adult individual whose residence is 155 E. Godfrey Avenue, Philadelphia, PA 19120. Pursuant to 29 U.S.C. § 216(b), Plaintiff Arroyo has consented in writing to become a Plaintiff in this action. See Exhibit A.

4. Defendant Aspen is a construction company that performs work in this jurisdiction and is headquartered at 2136 Haworth Street, Philadelphia, PA 19124. It also maintains a mail drop box at 4201 Neshaminy Boulevard, Suite 108, Bensalem, PA 19020.

5. Defendant Kaczmarczyk is the President and owner of Aspen who works out of the Haworth Street headquarters and is responsible for daily operational control of Aspen because he, *inter alia*, has the sole power to hire and fire employees, the power to determine wages for those employees, the power to schedule the employees work day and the hours they work, the responsibility to maintain employment records and other duties that signify significant operational control over the corporation's day-to day functions.

### **FACTS**

6. Aspen is a construction company that provides masonry work on various projects, both commercial and residential. It provides brick, block, stucco, siding and roofing services for its clients.

7. Defendants employ various masons/laborers in order to provide construction services on its projects.

8. Plaintiff was an employee of Defendants, worked in the mason/laborer position and was paid on an hourly basis.

9. All time records and information pertaining to hours worked and compensation of the Plaintiff are maintained at Aspen's corporate headquarters.

10. All timekeeping and compensation policies and practices relevant to this lawsuit have been developed at and implemented by Kaczmarczyk from Aspen's headquarters.

11. All paychecks, paystubs, IRS W-2 forms, and any other payroll documents are generated from and bear the address of Aspen's headquarters or its mail drop box address.

12. Defendants routinely made knowingly improper payments to employees for wages in the form of cash for work performed, without making the applicable deductions required by law, in order to avoid those deductions and to avoid paying overtime wages for hours worked in excess of 40 hours in any workweek.

13. Aspen performed services during Plaintiff's employment in a variety of locations in Pennsylvania and New Jersey, including Philadelphia.

14. Plaintiff was employed full time by Defendants and often worked in excess of 40 hours per week without compensation.

15. Defendants have failed to compensate Plaintiff for overtime wages due from March 2016 through October 2018.

#### **COLLECTIVE ACTION ALLEGATIONS**

16. Plaintiffs bring this FLSA claim pursuant to 29 U.S.C. §216(b) on behalf of themselves and all others employed by Defendants in the United States in the mason/laborer position during any time from November 11, 2016 through the present.

17. Plaintiffs' FLSA claim should proceed as a collective action because Plaintiffs and putative collective members are "similarly situated" as that term is defined in 29 U.S.C. §216(b) and the associated decisions of law.

**COUNT I - FLSA**

18. All of the previous paragraphs are incorporated as though fully set forth at length herein.

19. Plaintiff and putative collective members are employees covered by the FLSA's protections and Defendants are employers required to follow FLSA mandates.

20. The FLSA requires Defendants to pay Plaintiff and the putative collective members overtime premium compensation calculated at 150% of their regular pay rate for all hours worked in excess of 40 per week.

21. Defendants violated the FLSA by failing to pay Plaintiff and the putative collective members any compensation for all hours worked in excess of 40 per week.

22. In violating the FLSA, Defendants acted knowingly, willfully and with reckless disregard of clearly applicable FLSA provisions.

**JURY DEMAND**

23. Plaintiff requests a jury trial as to all claims so triable.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff seeks the following relief on behalf of himself and all others similarly situated:

- A. An order permitting this lawsuit to proceed as a collective action pursuant to 29 U.S.C. § 216(b);
- B. Unpaid regular wages and overtime wages;
- C. Liquidated damages and/or pre-judgment interest;



D. Attorney's fees and costs; and

E. Any other relief that the Court deems just and proper.

SEMANOFF ORMSBY  
GREENBERG & TORCHIA, LLC

BY: 

FRANK P. SPADA, JR., ESQUIRE  
STEPHEN C. GOLDBLUM, ESQUIRE  
JOSEPH W. FLUEHR, ESQUIRE  
2617 Huntingdon Pike  
Huntingdon Valley, PA 19006  
(215) 887-0200  
[fspada@sogtlaw.com](mailto:fspada@sogtlaw.com)  
[sgoldblum@sogtlaw.com](mailto:sgoldblum@sogtlaw.com)  
[jfluehr@sogtlaw.com](mailto:jfluehr@sogtlaw.com)

*ATTORNEYS FOR PLAINTIFF*

DATED: 11/11/19

## **EXHIBIT A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM ARROYO, on behalf of  
Himself and all others similarly situated,  
Plaintiff,

v.

ASPEN CONSTRUCTION SERVICES, INC.  
2136 Haworth Street  
Philadelphia, PA 19124

and

KRZYSZTOF KACZMARCZYK  
c/o Aspen Construction Services, Inc.  
2136 Haworth Street  
Philadelphia, PA 19124

Defendants.

CIVIL ACTION NO.

COLLECTIVE ACTION COMPLAINT

**OPT-IN CONSENT FORM**

1. I have worked as a mason/laborer for Aspen Construction Services, Inc. and its owner Krzysztof Kaczmarczyk. I worked there from about February 2016 until about October 2018.

2. I understand that this lawsuit includes claims for unpaid wages under the Fair Labor Standards Act (including for unpaid minimum wages, overtime, liquidated damages, attorneys' fees, costs and other relief). I consent to become an opt-in plaintiff in this lawsuit and to be bound by any judgment, settlement or resolution of those claims.

3. I designate Frank P. Spada, Jr., Esquire and Stephen C. Goldblum, Esquire of Semanoff Ormsby Greenberg & Torchia, LLC, 2617 Huntingdon Pike, Huntingdon Valley, PA 19006 to represent me for all purposes in this lawsuit.

Signature: William Arroyo

Date: 11/6/2019

Name Printed: William Arroyo

DOB: 7/29/1977

Address: 155 E. Godfrey Avenue, I-405

Phone: 267-864-1101

Philadelphia, PA 19120

Email: arroyowilliam583@gmail.com